

THE RELATIONSHIP BETWEEN CIVIL AND CUSTOMARY MARRIAGES

Part2 CONTINUES FROM LAST WEEKS ISSUE

Can one combine and customary and civil marriage?

The practice of combining customary with civil ceremonies is common in South Africa, and many variations are possible. The spouses may celebrate a customary marriage and, on the same day, or a short while later, have it solemnized again in a civil registry office. The rites may also be reversed, when a civil marriage is followed by a traditional wedding.

What are the requirements for entering into a customary marriage in terms of the Act?

There are three conditions for a customary marriage to be legally valid. First, both the people getting married must be over 18. Second, they must both agree to be married under customary law. Third, their marriage must be celebrated according to the prevailing customary law of their community. Does the law distinguish between customary marriages entered before and after the implementation of the act?

Yes, there are different legal implications. Women married before the implementation of the Act fall under the customary law prevailing at the date the marriage was concluded. This may mean that these women are not afforded equal status and capacity in law . As a result these women are not able to own or control property and are treated as perpetual minors.

Women married after the implementation of the Act, are automatically afforded equal status and capacity. They cannot be subjected to the husband's control and may exercise their autonomy, as they desire.

Monogamous customary marriages are automatically in community of property unless the parties do a contract stating otherwise. If a man wishes to enter into another customary marriage (polygynous marriages) he must apply to court with a written contract stating how the property in all the marriages will be regulated. The court can order the immediate division of the property of the first marriage.

May a women married before the implementation of the Act, have her customary marriage governed by the provisions of the Act?

Yes, the Act makes provision for these women to change the legal consequences of their marriage in order to create equal status and capacity for both the husband and wife. The parties must apply to court stating good reasons for the change and show that no third person will be prejudiced.**TO BE CONTINUED**

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